In the Supreme Court of Iowa

Amendments to Rule of Appellate Procedure 6.1005 Regarding Frivolous Appeals and Withdrawal Of Counsel (Including Related Changes to Other Rules)	))))))	**Order**

On February 10, 2012, the supreme court issued an order proposing amendments to Iowa Rule of Appellate Procedure 6.1005 ("Frivolous appeals; withdrawal of counsel") and related rule changes. This order followed earlier discussions with the offices of the state public defender and the attorney general; in addition, the order requested public comment on the proposed changes.

The court has received seven comments on the proposed changes by the March 16 deadline. These comments come from the attorney general, the state appellate defender, two attorneys in the appellate defender's office, and three private attorneys who practice in the area of criminal law. The court appreciates the comments and has found them helpful. The court explains below its responses to certain of the comments.

According to his comments, the attorney general does not oppose the proposed rule changes. However, he disagrees with the court's view (as expressed in the February 10 order) that the changes will not necessarily increase the workload of the attorney general's office. The attorney general points out that when a merits brief is filed on behalf of a criminal defendant, an assistant attorney general must review the record and prepare a responsive brief. Waiving the filing of an appellee's brief is not an acceptable option.

The court believes the attorney general's concerns are legitimate. The regular filing of appellee's briefs by the attorney general's office not only communicates the state's position to crime victims and the public, but also assists the appellate courts in deciding criminal appeals.

On the whole, though, the court still believes that the overall impact of the proposed rule changes will be to rationalize and streamline the disposition of criminal appeals. As noted in the February 10 order, one consequence of the existing frivolous appeal procedures has been that the merits briefing of certain issues is deferred to the postconviction relief stage. Our hope is that the new procedures will enable these issues to be addressed on direct appeal instead.

Like the attorney general, the state appellate defender does not oppose the proposed changes. However, his comments raise a question about a possible internal inconsistency in the amended rule. To address the concern, the court has included an additional sentence in 6.1005(1). The state appellate defender also expresses concern about additional cost burdens on his office resulting from the amendments, although he notes that the anticipated implementation of electronic filing for appeals may partially alleviate those costs. This court is committed to bringing electronic filing to the appellate courts in the near future.

Two attorneys in the state appellate defender's office voice opposition to the proposed changes in their comments. They believe, among other things, that the amendments will result in more attempts by appellate counsel to persuade defendants to voluntarily dismiss their appeals, additional affirmances without opinion by the court of appeals, and an increased workload for appellate counsel who will have to prepare final briefs and appendices in cases in which a motion to withdraw formerly would have been granted. The comments filed by these two attorneys are thoughtful and well-presented, but the court ultimately believes that anticipated benefits of the proposed rule changes outweigh potential drawbacks.

Under the existing rule 6.1005, assuming the defendant has been convicted following a trial, appellate counsel who desires to withdraw often files a motion that is as long as, if not longer than, a typical merits brief. In order to

decide this motion, the court must then review the entire record and consider potential appellate arguments—i.e., put itself to some extent in the role of the defendant's advocate.

Counsel and the court do not have to shoulder these burdens when the defendant's appellate counsel proceeds with the appeal and files a regular merits brief under rule 6.903. Furthermore, the lack of a truly adversarial process can lead (and has led) to meritorious arguments not being raised. Notably, two private attorneys who handle criminal appeals, at least one of them by contract with the state public defender, comment that they support the change, referring to some of these points in their comments.

According to the data available to the court, Iowa has been allowing attorneys to withdraw from handling criminal appeals at a much higher rate than most other jurisdictions. Even under the rule change, rule 6.1005 motions can continue to be filed in direct appeals from cases in which there was a guilty plea, and in many postconviction relief appeals. Finally, the court will continue to study the issues rule 6.1005 presents in an ongoing effort to assure that the appellate process complies with constitutional requirements and remains cost-effective and fair for all Iowans.

The text of the final version of the amendments follows this notice. These amendments will take effect on Monday, May 21, 2012, and will apply to all appeals pending as of that date.

Dated this 21st day of May, 2012.

The Supreme Court of Iowa

By Mark S. Cady
Mark S. Cady, Chief Justice